



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07068/2014

THE IMMIGRATION ACTS

**Heard at Harmondsworth
On 16 October 2014**

**Promulgated
On 24 October 2014**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MR ABDELKADER BOUROKBA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Chaghtai

For the Respondent: Mr L Collingridge, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Tunisia, born on 30 December 1985. He arrived in the UK on 3 December 2011 in possession of a visa as a spouse, valid until 12 December 2013.
2. It appears that after his arrival he and his wife separated and divorce proceedings were commenced. The appellant made applications on 11 December 2013 and 12 April 2014 for leave to remain on the basis of private life, under Article 8 of the ECHR. Those applications were refused. On 7 July 2014 he was served with notice of being an overstayer. On 1 September 2014 he claimed asylum.

3. His asylum claim was refused and a decision made on 15 September 2014 to remove him under Section 10 of the Immigration and Asylum Act 1999.
4. His appeal against that decision came before First-tier Tribunal Judge O'Garro on 24 September 2014, whereby she dismissed the appeal on all grounds. Permission to appeal was granted by a Judge of the Upper Tribunal, and thus the appeal came before me.

The basis of claim

5. The appellant's claim can be summarised as follows. He claimed that his family were involved in a dispute over property with another family called Al Salafie. According to his witness statement the problems between the two families have now extended beyond a simple land dispute, with a member of the Al Salafie family (or clan) having been killed. The appellant's father had sold his share of the land a long time ago.
6. In August 2010 the appellant says that he was beaten by unknown men on his way back from work, having been attacked from behind. The attack involved four men who ran away when a car stopped near to them. He believes that those men belonged to the Al Salafie family. He did not have any problems with anyone else and therefore strongly suspects that it was them who were involved. As a result of the attack he sustained injuries and reported the matter to the police. He went to hospital where he received treatment for his injuries.
7. Following that attack he decided not to go out at night and changed his route to and from work. However, in May or June 2011 he was attacked again by unknown men, again resulting in his suffering injuries. The matter was reported to the police who did not do anything to help him.
8. Subsequently, he was granted a visa for the UK to settle with his wife as her spouse. In his witness statement he says that he did not wish to stay in Tunisia any longer because of the danger, and also because he wanted to join his wife and begin a new life in the UK.
9. Whilst in the UK, and after having separated from his wife, he received a threatening phone call from a member of the Al Salafie clan. The caller threatened to kill him and said that they believed that he had been sending money to his family in Tunisia to provide financial support for them so that his family could continue the dispute.

The grounds of appeal to the Upper Tribunal and submissions

10. In summary, the grounds contend that the First-tier Judge erred in her assessment of the evidence. In stating at [46] that the appellant had submitted no evidence that he or his family owned land or property, the judge had failed to take into account the details of the family dispute with the Al Salafie family.

11. Although the judge had made a point at [48] about a visit made by the appellant from the UK to Tunisia adversely reflecting on his credibility, the judge had failed to take into account that it was only in January 2012 that he received threats over the phone in the UK.
12. It is also said in the grounds that the judge had failed to give weight to the medical report in relation to the appellant, concerning injuries he received in the second attack. In addition, the judge had failed to consider that the appellant suffers from depression and his memory is not good.
13. In terms of how the Al Salafie family managed to get his contact details in the UK, it was submitted that the judge had failed to take into account the ease with which such information could be obtained from relatives and friends. Furthermore, it was after discussion with his family in Tunisia that he decided to claim asylum.
14. Otherwise, it is said in the grounds that the judge's Article 8 assessment failed to take into account the length of time the appellant had been in the UK (three years) and the extent of his integration.

The hearing before the Upper Tribunal on 16 October 2014

15. At the start of the hearing an application for an adjournment, which had previously been refused prior to the hearing, was renewed. It has to be said, however, that the application was not pursued with much vigour, and in any event, only after enquiry by me as to whether the application for an adjournment was renewed.
16. Mr Chaghtai stated that he did not have a full set of papers from the appellant's previous representatives. He indicated that what he was missing was the reasons for refusal letter and the appellant's bundle. There was uncertainty over whether he had been provided with a copy of the appellant's asylum interview. It transpired, however, that a copy of the asylum interview had been provided to the appellant's present representatives prior to the hearing and was in Mr Chaghtai's possession, albeit that he said that he had not read it, stating that he had only received it at about 6pm the evening before the hearing. He indicated that he did have the appellant's witness statement.
17. In relation to country background material in the appellant's bundle, Mr Chaghtai said that he did not have a copy of the U.S. State Department Report or the Human Rights Watch Report for Tunisia. As I pointed out, however, these are documents in the public domain and it is to be noted that the present representatives were instructed by the appellant on 8 October 2014, so could have been expected to have considered those documents in advance of the hearing before the Upper Tribunal.
18. At 2.25pm I decided to put the matter back in the list to give Mr Chaghtai the opportunity to consider the documents that he had not previously considered, either because he did not have them or had not read them.

The hearing resumed at 3.30pm. Mr Chaghtai stated that he was ready to proceed. After my enquiry as to whether he was still seeking an adjournment, he stated that an adjournment would still be in the best interests of the appellant but said that he was in a position to make submissions on the appellant's behalf on the basis of the documentary evidence he now had. It was not explained what the purpose of any further adjournment would be.

Submissions

19. In summary, the submissions were as follows. In addition to the written grounds before the Upper Tribunal, Mr Chaghtai submitted that the First-tier Judge had not considered all the evidence and the circumstances of the case. The conclusion at [46] of the determination in relation to the land having been sold some years ago, fails to take into account the appellant's evidence that the dispute had extended beyond a mere land dispute. It was submitted that the judge had failed to take into account the appellant's witness statement when reaching her conclusions. Judge O'Garro, it was submitted, had failed to take into account that the authorities had failed to provide protection to the appellant. Her conclusions generally were based on the respondent's refusal letter. It was also submitted that the appellant's answers in interview did not reflect the questions that he was being asked.
20. Mr Collingridge referred to various parts of the determination in support of the submission that Judge O'Garro had considered all the evidence and come to conclusions that were open to her.
21. The evidence from the interview indicated that the appellant did understand the questions that he was asked. There was no need for Judge O'Garro to consider sufficiency of protection in the light of the fact that she did not accept his account. It is clear that she had considered the medical report.

My assessment

22. At the outset it is necessary to deal with an issue which I did not draw to the attention of the parties but which nevertheless requires resolution. That is that the application for permission to appeal made to the Upper Tribunal was out of time. The Upper Tribunal Judge who granted permission to appeal did not deal with that issue. In the circumstances, in the light of the decisions of the Upper Tribunal in Boktor and Wanis (late application for permission) Egypt [2011] UKUT 00442 (IAC), and Samir (FtT Permission to appeal: time) [2013] UKUT 00003(IAC), I treat the grant of permission as conditional.
23. The application for permission to appeal explains that it was late because the appellant's previous representatives had failed to take further instructions in time from the appellant in relation to the First-tier judge's determination, bearing in mind that the appellant was detained. It is

stated that he was only informed about the refusal of his appeal on 3 September 2014 by his previous representatives. He contacted his present representatives, it is said, on 6 September 2014. Final instructions were received from the appellant on 7 October 2014. It would appear that the 3 and 6 September dates should read 'October'.

24. The application for permission to appeal was received by the Upper Tribunal on 10 October 2014. This is outside the time period permitted for making the application. Although the explanation for lateness does not cover precisely the entire period of the delay, bearing in mind the change in solicitors and that the appellant was for a short period of time unrepresented, I extend time for submitting the application pursuant to rule 5(3)(a) of the Tribunal Procedure (Upper Tribunal) rules 2008.
25. I now deal with the substance of the challenges to the decision of the First-tier Tribunal. It is important to note two particular features of the determination of the First-tier Tribunal. The first is that at [7] Judge O'Garro referred to some of the materials submitted on behalf of the appellant, which included "amendments to the interview record". This is plainly a reference to a letter dated 15 September 2014 from the appellant's solicitors. Amongst other things, it contains amendments to the answers to three questions in the asylum interview, plainly on the appellant's instructions.
26. The second matter of significance is that at [23] it is stated that the appellant adopted as his evidence his prepared statement. This is a reference to the witness statement made by the appellant in support of the appeal. At [41] - [42] Judge O'Garro referred to having considered all the evidence, including the appellant's evidence, and referred in general terms to the documents produced.
27. The first matter that I have referred to is relevant to the contention that the appellant's answers in the asylum interview did not reflect the questions that he was being asked. This submission is undermined somewhat by the limited extent to which the appellant's legal representatives made representations in relation to the interview, limited to clarification of three questions only.
28. The second matter relates to the suggestion that the judge failed to take into account the appellant's witness statement.
29. Although it is correct to say that the appellant's account was to the effect that the dispute had extended beyond merely being a land dispute, the judge was entitled to take into account that the appellant had submitted no evidence that he or his family had ever owned land or property. At [46] the reference to 'no evidence' plainly means no evidence beyond the appellant's account.
30. Even if at that part of the determination the judge did fail to take into account what the appellant said about the dispute having extended

beyond a mere land dispute, there were other reasons given for finding his account lacking in credibility.

31. It appears that the appellant returned to Tunisia in January 2012, a matter that the appellant gave evidence about before the First-tier Tribunal. At [48] the judge concluded that the appellant would not have returned to Tunisia in January 2012, spending three weeks there, if he were genuinely in fear from the Al Salafie family. The grounds of appeal to the Upper Tribunal contend that the judge failed to appreciate that at that time he had had no serious threats to his life. It is said that the phone call threatening him in the UK was a more recent call.
32. However, it is the appellant's case that he was attacked twice in Tunisia and at [14] of his witness statement he stated that he did not wish to stay in Tunisia any longer due to the danger to his life, and also his intention of joining his wife to begin a new life in the UK. It is apparent, therefore, that the appellant's account is that he did feel at risk in Tunisia.
33. In these circumstances, the judge was entitled to conclude at [48] that it was not credible that he would have returned to Tunisia for three weeks in January 2012, his wife having apparently purchased a return ticket as a surprise birthday present. In the same paragraph it was concluded that the appellant's wife would have known of his claimed fear and would not have considered sending him to Tunisia for his birthday, because of the risk that he would be harmed. That is a finding that was plainly open to the judge.
34. There was a medical report in relation to the appellant, translated into English. It refers to an examination of the appellant on 11 May 2011, stating that the appellant complained of hearing impairment on the left side "after a brawl" and that he had diffused headaches. The report goes on to state that the examination showed a "left Hemotympanum with conductive deafness". It refers to the treatment he received. It is contended in the grounds that the judge "failed to give weight" to the medical evidence.
35. Of course classically, matters of weight are entirely for the judge assessing the evidence. At [50] - [51] consideration was given to that medical evidence. It was noted that there was inconsistency in relation to the date of the incident, the difference being between May 2011 and June 2011 as between the asylum interview and the medical report itself. The judge also noted that the report makes reference to the appellant suffering hearing impairment "after a brawl", which the judge found to be at variance with the appellant's account of the incident that occurred in 2011.
36. Whilst it may be that other points could be made on behalf of the appellant in relation to the judge's consideration of the medical evidence, it is not correct to say that the report was not considered. The weight to be attached to that report was for the judge. The findings made by the judge

in relation to the medical evidence were unarguably findings that were open to her.

37. Although it is said that the appellant suffers from memory loss, aside from the fact that there is no evidence to support the appellant's contention in that regard, a lack of ability to remember particular facts or circumstances hardly features in the judge's determination in terms of any adverse assessment of credibility.
38. This in fact also relates to the suggestion, at least implied, that in the interview the appellant was not able to follow the questions that were asked of him. Again, however, that is plainly not the case as even a cursory examination of the asylum interview reveals. The record of interview indicates a good understanding of the matters put to him and whereby the appellant explained the background to the claimed dispute, with various detailed matters being referred to.
39. The appellant's account includes the claim that he received threatening phone calls in the UK. In answer to question 163 of the interview, when asked how he thought the Al Salafie family got his number, he answered "From my friends or family" in that his family could have given it to a friend and they could have taken it from his friend. He then referred to occasions such as Eid or Ramadan whereby a greeting is sent to friends, stating that someone may have come and asked for the number, pretending that they worked with him, the appellant.
40. At [52] of the determination Judge O'Garro, referring to the appellant's claim that six months ago he had received threatening phone calls, concluded that he had provided no credible explanation as to how the "clan member" would have obtained his personal telephone number. Although she did not refer to the asylum interview in this context, it was plainly open to her to conclude that he had not provided a credible explanation for that matter.
41. Another matter raised in the grounds is the suggestion that the judge failed to take into account the evidence that the Al Salafie family or clan has influence and power in Tunisia and would therefore be able easily to target the appellant. In fact, at [53] Judge O'Garro referred to submissions made on behalf of the appellant in relation to background evidence about the "Salafist movement". She referred to having considered the "objective evidence" but found that this evidence did not support the appellant's claim at all, giving reasons in relation to the background evidence for coming to that view.
42. A further point however, is that the suggestion that this family or group have such influence and power, is a matter that further undermines the appellant's account in terms of his having gone back to Tunisia from the UK with his wife having bought the ticket as a birthday present.

43. Insofar as the grounds contain other arguments, in reality they amount only to a repetition of the basis of the appellant's claim and a disagreement with the judge's conclusions on matters which were open to her.
44. So far as Article 8 is concerned, it was accepted on behalf of the appellant before me that he was not able to meet the Article 8 immigration rules. Indeed, so much is in any event apparent from the facts. This was also a finding made by Judge O'Garro. She went on to conclude that it was not necessary to consider Article 8 proper given that there was nothing, in effect, to indicate that there were factors beyond the Article 8 immigration rules which could weigh in favour of the appellant in a proportionality assessment.
45. She was plainly correct in that conclusion. The appellant arrived in the UK only in December 2011, on the basis of a marriage that had since broken down. There was no basis from which to conclude that his appeal could conceivably have been allowed under Article 8 proper.
46. In conclusion, I am not satisfied that the grounds or submissions reveal any error of law in the decision of the First-tier Tribunal. Accordingly, the decision to dismiss the appeal on all grounds stands.

Decision

47. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to dismiss the appeal on all grounds is to stand.

Upper Tribunal Judge Kopieczek

22/10/14